

AMENDED IN SENATE MAY 22, 2012

**SENATE BILL**

**No. 1506**

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**Introduced by Senator Leno**

February 24, 2012

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An act to amend Sections 11350, 11357, 11377, and 11590 of the Health and Safety Code, *and to add Section 1210.6 to the Penal Code*, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1506, as amended, Leno. Possession of controlled substances: penalties.

~~Existing~~

(1) *Existing* law provides that the unlawful possession of certain controlled substances, including, among others, cocaine, heroin, and those classified in Schedule III, IV, or V as a narcotic drug, is a felony punishable in a county jail for 16 months, or 2 or 3 years. *The unlawful possession of the depressants mecloqualone, methaqualone, and gamma hydroxybutyric acid is punishable as a misdemeanor by imprisonment for not more than one year in a county jail or as a felony by imprisonment in a county jail for 16 months, or 2 or 3 years.* The unlawful possession of certain other controlled substances, including, among others, concentrated cannabis, and those classified in Schedule III, IV, or V as nonnarcotic drugs, is punishable as a misdemeanor by imprisonment for not more than one year in a county jail, a fine, or by both imprisonment and fine, or as a felony by imprisonment in a county jail for 16 months, or 2 or 3 years.

This bill would make the unlawful possession of any of those substances a misdemeanor punishable by imprisonment in a county jail for not more than one year.

~~Existing~~

(2) *Existing* law requires a person who is convicted of specified controlled substance offenses to register with the law enforcement agency of a city, county, or city and county within 30 days of becoming a resident of that city, county, or city and county.

This bill would exclude certain misdemeanor offenses from the offenses that require a person to register, including, *among others*, a misdemeanor conviction for unlawful possession of concentrated cannabis.

(3) *Existing law requires each person who is convicted of specified controlled substances offenses to pay a drug program fee in an amount not to exceed \$150.*

*This bill would, for persons convicted of specified misdemeanor offenses involving the possession of controlled substances, raise the fee to \$500 for a first offense and to \$1,500 for a second or subsequent offense. The bill would raise the fee to \$250 for a first offense and to \$500 for a second or subsequent offense if the person is granted probation and accepts the terms of probation.*

(4) *Existing law requires a person convicted of a nonviolent drug possession offense to be granted probation.*

*This bill would, if a defendant who has been offered probation, pursuant to the above law or any other law providing probation for a nonviolent drug possession offense, rejects probation, authorize the correctional administrator of a jail to require the defendant to serve the balance of his or her sentence on continuous electronic monitoring if the correctional administrator has made a determination that conditions in the jail necessitate releasing sentenced misdemeanor inmates. The bill would authorize the correctional administrator to condition the release on any reasonable conditions related to the underlying offense, and to impose sanctions for a violation of the conditions of release, as provided.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11350 of the Health and Safety Code is
- 2 amended to read:
- 3 11350. (a) Except as otherwise provided in this division, every
- 4 person who possesses (1) any controlled substance specified in

subdivision (b) or (c) of, or paragraph (1) of subdivision (f) of, Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year.

(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in a county jail for not more than one year ~~or pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

(c) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a) or (b), the judge may, in addition to any punishment provided for pursuant to subdivision (a) or (b), assess against that person a fine not to exceed seventy dollars (\$70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

*(d) A person convicted of a misdemeanor pursuant to this section shall be subject to Section 1210.6 of the Penal Code, and shall be subject to the following:*

*(1) (A) Except as provided in subparagraph (B), the drug program fee required by Section 11372.7 shall be imposed as follows:*

*(i) For a first offense, the defendant shall pay a drug program fee in an amount not to exceed five hundred dollars (\$500).*

*(ii) For a second or subsequent offense, the defendant shall pay a drug program fee in an amount not to exceed one thousand five hundred dollars (\$1,500).*

*(B) If the defendant is granted probation and accepts the terms of probation, the drug program fee required by Section 11372.7 shall be imposed as follows:*

*(i) For a first offense, the defendant shall pay a drug program fee in an amount not to exceed two hundred fifty dollars (\$250).*

1     (ii) *For a second or subsequent offense, the defendant shall pay*  
2     *a drug program fee in an amount not to exceed five hundred dollars*  
3     *(\$500).*

4     (2) *In imposing the drug program fee, the court shall make a*  
5     *determination of the defendant's ability to pay the fee pursuant to*  
6     *subdivision (b) of Section 11372.7.*

7     (3) *In making a determination of the ability of the defendant to*  
8     *pay all or a portion of the reasonable cost of any probation*  
9     *supervision pursuant to Section 1203.1b of the Penal Code, the*  
10    *probation officer, or his or her authorized representative, shall*  
11    *take into account the amount of the drug program fee that the*  
12    *defendant is ordered to pay pursuant to this subdivision.*

13    SEC. 2. Section 11357 of the Health and Safety Code is  
14    amended to read:

15    11357. (a) Except as authorized by law, every person who  
16    possesses any concentrated cannabis shall be punished by  
17    imprisonment in the county jail for a period of not more than one  
18    year or by a fine of not more than five hundred dollars (\$500), or  
19    by both the fine and imprisonment.

20    (b) Except as authorized by law, every person who possesses  
21    not more than 28.5 grams of marijuana, other than concentrated  
22    cannabis, is guilty of an infraction punishable by a fine of not more  
23    than one hundred dollars (\$100).

24    (c) Except as authorized by law, every person who possesses  
25    more than 28.5 grams of marijuana, other than concentrated  
26    cannabis, shall be punished by imprisonment in a county jail for  
27    a period of not more than six months or by a fine of not more than  
28    five hundred dollars (\$500), or by both the fine and imprisonment.

29    (d) Except as authorized by law, every person 18 years of age  
30    or over who possesses not more than 28.5 grams of marijuana,  
31    other than concentrated cannabis, upon the grounds of, or within,  
32    any school providing instruction in kindergarten or any of grades  
33    1 through 12 during hours the school is open for classes or  
34    school-related programs is guilty of a misdemeanor and shall be  
35    punished by a fine of not more than five hundred dollars (\$500),  
36    or by imprisonment in a county jail for a period of not more than  
37    10 days, or both.

38    (e) Except as authorized by law, every person under the age of  
39    18 who possesses not more than 28.5 grams of marijuana, other  
40    than concentrated cannabis, upon the grounds of, or within, any

1 school providing instruction in kindergarten or any of grades 1  
2 through 12 during hours the school is open for classes or  
3 school-related programs is guilty of a misdemeanor and shall be  
4 subject to the following dispositions:

5 (1) A fine of not more than two hundred fifty dollars (\$250),  
6 upon a finding that a first offense has been committed.

7 (2) A fine of not more than five hundred dollars (\$500), or  
8 commitment to a juvenile hall, ranch, camp, forestry camp, or  
9 secure juvenile home for a period of not more than 10 days, or  
10 both, upon a finding that a second or subsequent offense has been  
11 committed.

12 *(f) A person convicted of a misdemeanor pursuant to subdivision*  
13 *(a) of this section shall be subject to Section 1210.6 of the Penal*  
14 *Code, and shall be subject to the following:*

15 *(1) (A) Except as provided in subparagraph (B), the drug*  
16 *program fee required by Section 11372.7 shall be imposed as*  
17 *follows:*

18 *(i) For a first offense, the defendant shall pay a drug program*  
19 *fee in an amount not to exceed five hundred dollars (\$500).*

20 *(ii) For a second or subsequent offense, the defendant shall pay*  
21 *a drug program fee in an amount not to exceed one thousand five*  
22 *hundred dollars (\$1,500).*

23 *(B) If the defendant is granted probation and accepts the terms*  
24 *of probation, the drug program fee required by Section 11372.7*  
25 *shall be imposed as follows:*

26 *(i) For a first offense, the defendant shall pay a drug program*  
27 *fee in an amount not to exceed two hundred fifty dollars (\$250).*

28 *(ii) For a second or subsequent offense, the defendant shall pay*  
29 *a drug program fee in an amount not to exceed five hundred dollars*  
30 *(\$500).*

31 *(2) In imposing the drug program fee, the court shall make a*  
32 *determination of the defendant's ability to pay the fee pursuant to*  
33 *subdivision (b) of Section 11372.7.*

34 *(3) In making a determination of the ability of the defendant to*  
35 *pay all or a portion of the reasonable cost of any probation*  
36 *supervision pursuant to Section 1203.1b of the Penal Code, the*  
37 *probation officer, or his or her authorized representative, shall*  
38 *take into account the amount of the drug program fee that the*  
39 *defendant is ordered to pay pursuant to this subdivision.*

1 SEC. 3. Section 11377 of the Health and Safety Code is  
2 amended to read:

3 11377. (a) Except as authorized by law and as otherwise  
4 provided in subdivision (b) or Section 11375, or in Article 7  
5 (commencing with Section 4211) of Chapter 9 of Division 2 of  
6 the Business and Professions Code, every person who possesses  
7 any controlled substance which is (1) classified in Schedule III,  
8 IV, or V, and which is not a narcotic drug, (2) specified in  
9 subdivision (d) of Section 11054, except paragraphs (13), (14),  
10 (15), and (20) of subdivision (d), (3) specified in paragraph (11)  
11 of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
12 or (3) of subdivision (f) of Section 11054, or (5) specified in  
13 subdivision (d), (e), or (f) of Section 11055, unless upon the  
14 prescription of a physician, dentist, podiatrist, or veterinarian,  
15 licensed to practice in this state, shall be punished by imprisonment  
16 in a county jail for a period of not more than one year.

17 (b) (1) Any person who violates subdivision (a) by unlawfully  
18 possessing a controlled substance specified in subdivision (f) of  
19 Section 11056, and who has not previously been convicted of a  
20 violation involving a controlled substance specified in subdivision  
21 (f) of Section 11056, is guilty of a misdemeanor.

22 (2) Any person who violates subdivision (a) by unlawfully  
23 possessing a controlled substance specified in subdivision (g) of  
24 Section 11056 is guilty of a misdemeanor.

25 (3) Any person who violates subdivision (a) by unlawfully  
26 possessing a controlled substance specified in paragraph (7) or (8)  
27 of subdivision (d) of Section 11055 is guilty of a misdemeanor.

28 (4) Any person who violates subdivision (a) by unlawfully  
29 possessing a controlled substance specified in paragraph (8) of  
30 subdivision (f) of Section 11057 is guilty of a misdemeanor.

31 (c) In addition to any fine assessed under subdivision (b), the  
32 judge may assess a fine not to exceed seventy dollars (\$70) against  
33 any person who violates subdivision (a), with the proceeds of this  
34 fine to be used in accordance with Section 1463.23 of the Penal  
35 Code. The court shall, however, take into consideration the  
36 defendant's ability to pay, and no defendant shall be denied  
37 probation because of his or her inability to pay the fine permitted  
38 under this subdivision.

1     (d) A person convicted of a misdemeanor pursuant to this section  
2 shall be subject to Section 1210.6 of the Penal Code, and shall be  
3 subject to the following:

4     (1) (A) Except as provided in subparagraph (B), the drug  
5 program fee required by Section 11372.7 shall be imposed as  
6 follows:

7         (i) For a first offense, the defendant shall pay a drug program  
8 fee in an amount not to exceed five hundred dollars (\$500).

9         (ii) For a second or subsequent offense, the defendant shall pay  
10 a drug program fee in an amount not to exceed one thousand five  
11 hundred dollars (\$1,500).

12     (B) If the defendant is granted probation and accepts the terms  
13 of probation, the drug program fee required by Section 11372.7  
14 shall be imposed as follows:

15         (i) For a first offense, the defendant shall pay a drug program  
16 fee in an amount not to exceed two hundred fifty dollars (\$250).

17         (ii) For a second or subsequent offense, the defendant shall pay  
18 a drug program fee in an amount not to exceed five hundred dollars  
19 (\$500).

20     (2) In imposing the drug program fee, the court shall make a  
21 determination of the defendant's ability to pay the fee pursuant to  
22 subdivision (b) of Section 11372.7.

23     (3) In making a determination of the ability of the defendant to  
24 pay all or a portion of the reasonable cost of any probation  
25 supervision pursuant to Section 1203.1b of the Penal Code, the  
26 probation officer, or his or her authorized representative, shall  
27 take into account the amount of the drug program fee that the  
28 defendant is ordered to pay pursuant to this subdivision.

29     SEC. 4. Section 11590 of the Health and Safety Code, as  
30 amended by Section 2 of Chapter 1417 of the Statutes of 1990, is  
31 amended to read:

32     11590. (a) (1) Except as provided in subdivisions (c) and (d),  
33 any person who is convicted in the State of California of any  
34 offense defined in Section ~~11350~~, 11351, 11351.5, 11352, 11353,  
35 11353.5, 11353.7, 11354, 11355, 11358, 11359, 11360, 11361,  
36 11363, 11366, 11366.5, 11366.6, 11368, 11378, 11378.5, 11379,  
37 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or any person  
38 who is discharged or paroled from a penal institution where he or  
39 she was confined because of the commission of any such offense,  
40 or any person who is convicted in any other state of any offense

1 which, if committed or attempted in this state, would have been  
2 punishable as one or more of the above-mentioned offenses, shall,  
3 within 30 days of his or her coming into any county, or city, or  
4 city and county in which he or she resides or is temporarily  
5 domiciled for that length of time, register with the chief of police  
6 of the city in which he or she resides or the sheriff of the county  
7 if he or she resides in an unincorporated area.

8 (2) For persons convicted of an offense defined in Section  
9 11378, 11379, or 11380, this subdivision shall apply only to  
10 offenses involving controlled substances specified in paragraph  
11 (12) of subdivision (d) of Section 11054 and paragraph (2) of  
12 subdivision (d) of Section 11055, and to analogs of these  
13 substances, as defined in Section 11401. For persons convicted of  
14 an offense defined in Section 11379 or 11379.5, this subdivision  
15 shall not apply if the conviction was for transporting, offering to  
16 transport, or attempting to transport a controlled substance.

17 (b) Any person who is convicted in any federal court of any  
18 offense which, if committed or attempted in this state, would have  
19 been punishable as one or more of the offenses enumerated in  
20 subdivision (a), shall, within 30 days of his or her coming into any  
21 county, or city, or city and county in which he or she resides or is  
22 temporarily domiciled for that length of time, register with the  
23 chief of police of the city in which he or she resides or the sheriff  
24 of the county if he or she resides in an unincorporated area.

25 (c) This section does not apply to a conviction of a misdemeanor  
26 under Section 11360.

27 (d) The registration requirements imposed by this section for  
28 the conviction of offenses defined in Section 11353.7, 11366.5,  
29 11366.6, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380,  
30 11380.5, or 11383, shall apply to any person who commits any of  
31 those offenses on and after January 1, 1990.

32 SEC. 5. Section 11590 of the Health and Safety Code, as  
33 amended by Section 1 of Chapter 714 of the Statutes of 1995, is  
34 amended to read:

35 11590. (a) (1) Except as provided in subdivisions (c) and (d),  
36 any person who is convicted in the State of California of any  
37 offense defined in Section ~~11350~~, 11351, 11351.5, 11352, 11353,  
38 11353.5, 11353.7, 11354, 11355, 11358, 11359, 11360, 11361,  
39 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378, 11378.5,  
40 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or



1 any person who is discharged or paroled from a penal institution  
2 where he or she was confined because of the commission of any  
3 such offense, or any person who is convicted in any other state of  
4 any offense which, if committed or attempted in this state, would  
5 have been punishable as one or more of the above-mentioned  
6 offenses, shall, within 30 days of his or her coming into any county,  
7 or city, or city and county in which he or she resides or is  
8 temporarily domiciled for that length of time, register with the  
9 chief of police of the city in which he or she resides or the sheriff  
10 of the county if he or she resides in an unincorporated area.

11 (2) For persons convicted of an offense defined in Section  
12 11378, 11379, or 11380, this subdivision shall apply only to  
13 offenses involving controlled substances specified in paragraph  
14 (12) of subdivision (d) of Section 11054 and paragraph (2) of  
15 subdivision (d) of Section 11055, and to analogs of these  
16 substances, as defined in Section 11401. For persons convicted of  
17 an offense defined in Section 11379 or 11379.5, this subdivision  
18 shall not apply if the conviction was for transporting, offering to  
19 transport, or attempting to transport a controlled substance.

20 (b) Any person who is convicted in any federal court of any  
21 offense which, if committed or attempted in this state, would have  
22 been punishable as one or more of the offenses enumerated in  
23 subdivision (a), shall, within 30 days of his or her coming into any  
24 county, or city, or city and county, in which he or she resides or  
25 is temporarily domiciled for that length of time, register with the  
26 chief of police of the city in which he or she resides or the sheriff  
27 of the county if he or she resides in an unincorporated area.

28 (c) This section does not apply to a conviction of a misdemeanor  
29 under Section 11360.

30 (d) The registration requirements imposed by this section for  
31 the conviction of offenses defined in Section 11353.7, 11366.5,  
32 11366.6, 11370.1, 11378, 11378.5, 11379, 11379.5, 11379.6,  
33 11380, 11380.5, or 11383, shall apply to any person who commits  
34 any of those offenses on and after January 1, 1990.

35 *SEC. 6. Section 1210.6 is added to the Penal Code, to read:*

36 *1210.6. (a) If a defendant who has been offered probation*  
37 *pursuant to Section 1201.1, or pursuant to any other law providing*  
38 *probation for a nonviolent drug possession offense, rejects*  
39 *probation, and the court imposes a sentence to be served in a*  
40 *county jail, the correctional administrator of the jail may, if a*

1 *determination is made by the correctional administrator that*  
2 *conditions in the jail facility necessitate releasing sentenced*  
3 *misdemeanor inmates prior to their serving their sentence due to*  
4 *lack of jail space, require the defendant to serve the balance of*  
5 *his or her sentence on continuous electronic monitoring pursuant*  
6 *to Chapter 1.4 (commencing with Section 1210.7). The correctional*  
7 *administrator may condition release on any reasonable conditions*  
8 *related to the underlying offense, including, but not limited to,*  
9 *drug testing, and may subject the released inmate to the following*  
10 *sanctions for a violation of the conditions of release:*

11 *(1) For a first violation, the defendant may be incarcerated*  
12 *immediately for a period not exceeding 48 hours, without the need*  
13 *of a warrant of arrest or a court hearing.*

14 *(2) For a second violation, the defendant may be incarcerated*  
15 *immediately for a period not exceeding 72 hours, without the need*  
16 *for a warrant of arrest or a court hearing.*

17 *(3) For a third or subsequent violation, the defendant may be*  
18 *incarcerated for a period not exceeding 120 hours.*

19 *(b) The total number of days a person spends in incarceration*  
20 *and on alternative custody, including incarceration prior to*  
21 *placement on alternative custody, incarceration pursuant to*  
22 *paragraphs (1) to (3), inclusive, of subdivision (a), and time spent*  
23 *on alternative custody, shall not exceed the total number of days*  
24 *provided in the court's original sentence.*